

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL REVISION APPLICATION No. 164 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

=====

KANIYALAL SHANTILAL PATEL - Applicant(s)

Versus

THE STATE OF GUJARAT - Respondent(s)

=====

Appearance :

MR YC CONTRACTOR for Applicant(s) : 1,
Mr.Mukesh Patel, A.P.P. for Respondent(s) : 1,

=====

CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 26/06/2007

ORAL JUDGMENT

1. Rule. Learned A.P.P. Mr. Mukesh Patel waives service on
behalf of the respondent no.1-State.

2. This Criminal Revision Application is directed against the judgment and order dated 15th March, 2007 passed by the Additional Sessions Judge, Fast Track Court no.4, Ahmedabad City in Criminal Case no.321/2006 whereby the discharge application preferred by the petitioner-accused came to be rejected.

3. The present petitioner has been chargesheeted for the offence under Section 302 of the Indian Penal Code and in connection with the said charge-sheet Criminal Case no.321/2006 is pending before the Additional Sessions Judge, Fast Track Court no.4, Ahmedabad City. The present petitioner had submitted an application under Section 227 of the Criminal Procedure Code, 1973 for discharging him of the alleged offence. After hearing the parties of both sides and taking into consideration the papers of charge-sheet, the learned Sessions Judge rejected the said application against which the present petitioner has preferred this Criminal Revision Application.

4. Heard learned Counsel Mr. Y.C. Contractor for the petitioner and learned A.P.P. Mr.Mukesh Patel for the respondent no.1-State.

5. It is vehemently argued by learned Advocate Mr. Contractor that no case is made out against the present petitioner-original accused and the petitioner is totally innocent and learned Sessions Judge erred in not allowing the application for discharge.

6. Learned A.P.P Mr.Mukesh Patel for the respondent no.1-State submitted that the order passed by the learned Sessions Judge is legal and proper and is not required to be interfered with.

7. This Court has gone through the policepapers and from the allegations made in the complaint prima facie case is made out against the accused. It transpires from the FIR that accused is involved in the crime as the complainant- eye-witness is stated to have seen the accused inflicting blows on the deceased victim. It is also pertinent to note that FIR also reveals that the alleged knife used in commission of crime has been recovered from the place where it was hidden, at the instance of the petitioner- accused by drawing discovery Panchnama under Section 27 of the Evidence Act which is sufficient ground for proceeding against the petitioner-accused. At the time of framing the charge, this Court has only to see whether there is sufficient evidence to initiate trial or not and not the question whether the accused would be convicted or whether the trial would end in conviction of the accused. In that view of the matter, the learned Additional Sessions Judge, Ahmedabad City, was perfectly justified in rejecting the discharge application of the present petitioner. I am fortified in my view by the decision rendered in the case of State of Bihar v. Ramesh Singh[(1977) 4 SCC 39 wherein it was observed that: " Considering the scope of Sections 227 and 228 of the Code, it was held that at the stage of framing of charge it is not obligatory for the Judge to

consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. At that stage, the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion, at the initial stage of framing of charge, is sufficient to frame the charge and in that event it is not open to say that there is no sufficient ground for proceeding against the accused”.

8. Learned Counsel for the applicant in support of his contention that the discharge application ought to have been allowed by the learned Additional Sessions Judge has placed reliance on the following authorities: (1) Sarbans Singh and Others v. State of NCT of Delhi (2005 (2) Criminal Court Cases 0790 (Delhi) wherein considering the totality of circumstances the prima facie case that emerged was that of innocence of the accused, and therefore, the petitioner-accused came to be discharged. That is not so in the present case as discussed above. Hence, this decision cannot be made applicable to the facts of the present case. (2) State of Orissa vs. Debendra Nath Padhi (2005(1) Criminal Court Cases 0312 (S.C.). The facts in this case is entirely different from that of the facts of the present case, and therefore, cannot be of any help to the present petitioner.

9. For these reasons, I am of the view that there being sufficient

ground for trying the accused in the instant case, this Criminal Revision Application is liable to be dismissed, and is hereby dismissed. Rule is discharged.

(M.D.Shah,J.)

lee.